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MJI Publications Updates

Adoption Proceedings Benchbook

**Child Protective Proceedings
Benchbook (Revised Edition)**

Crime Victim Rights Manual

**Criminal Procedure Monograph 3—
Misdemeanor Arraignments & Pleas
(Revised Edition)**

**Criminal Procedure Monograph 4—
Felony Arraignments in District Court
(Revised Edition)**

Domestic Violence Benchbook (3rd ed)

**Friend of the Court Domestic Violence
Resource Book (Revised Edition)**

**Juvenile Justice Benchbook (Revised
Edition)**

**Managing a Trial Under the Controlled
Substances Act**

Sexual Assault Benchbook

Update: Adoption Proceedings Benchbook

CHAPTER 1

Introduction

1.3 Purposes of the Adoption Code

Effective December 28, 2004, 2004 PA 487 amended MCL 710.21a. The amendments expanded the purposes of the Adoption Code. On page 4, add the following text to the quoted statute before section 1.4:

“(d) To achieve permanency and stability for adoptees as quickly as possible.

“(e) To support the permanency of a finalized adoption by allowing all interested parties to participate in proceedings regarding the adoptee.”

CHAPTER 2

Freeing a Child for Adoption

2.9 Withholding Consent

A. Motion to Determine if Arbitrary and Capricious

Near the top of page 41, after the quote of MCL 710.42(2)(a)–(b) insert the following text:

The court shall provide notice of a motion to determine if a denial of consent was arbitrary and capricious to all of the following:

- ♦ The petitioner or petitioners.
- ♦ The adoptee, if over 14 years of age.
- ♦ A minor parent, adult parent, or surviving parent of an adoptee, unless one or more of the following apply:
 - the parental rights of the parent have been terminated.
 - a guardian of the adoptee, with specific authority to consent to adoption, has been appointed.
 - a guardian of the parent, with specific authority to consent to adoption, has been appointed.
 - the parent has released parental rights.
 - the parent has consented to the adoption.
- ♦ The FIA or child placing agency to which the adoptee has been, or is proposed to be, released or committed by an order of the court.
- ♦ A parent, guardian, or guardian ad litem of an unemancipated minor parent of the adoptee.
- ♦ The court with permanent custody of the adoptee.
- ♦ A child placing agency of another state or country that has the authority to consent to adoption.
- ♦ The guardian or guardian ad litem of an interested party.
- ♦ The prospective adoptee's guardian ad litem if one has been appointed during a child protection proceeding.
- ♦ The prospective adoptive parent who received consent to adopt.

MCL 710.24a(1) and MCL 710.45(5).

CHAPTER 2

Freeing a Child for Adoption

2.9 Withholding Consent

B. Disposition

Effective December 28, 2004, 2004 PA 486 amended MCL 710.45. If the court finds clear and convincing evidence that the decision to withhold consent was arbitrary and capricious, the court is required to issue a written decision. On page 42, replace the quote of MCL 710.45(6) with the following text:

On the other hand, MCL 710.45(8)* states:

“If the court finds by clear and convincing evidence that the decision to withhold consent was arbitrary and capricious, the court shall issue a written decision and may terminate the rights of the appropriate court, child placing agency, or [FIA] and may enter further orders in accordance with this chapter or section 18 of chapter XIIA as the court considers appropriate. In addition, the court may grant to the petitioner reimbursement for petitioner’s costs of preparing, filing, and arguing the motion alleging the withholding of consent was arbitrary and capricious, including a reasonable allowance for attorney fees.”

*MCL
710.45(6) has
been
renumbered as
MCL
710.45(8).

CHAPTER 4

Jurisdiction, Venue, and Petition Requirements

4.2 Venue

Effective December 28, 2004, 2004 PA 487 amended MCL 710.24. On pages 125–126, delete the first three paragraphs of Section 4.2 and replace them with the following text:

When there is one applicant for adoption, venue is proper in adoption proceedings in the county where the following circumstances exist:

- the petitioner resides; or
- the adoptee is found; or
- if the petitioner and adoptee reside out of state, where the parent's parental rights were terminated or are pending termination; or
- if both parents' parental rights were terminated at different times and in different courts, in the county where parental rights were first terminated. MCL 710.24(1).

If a temporary placement of the child has already occurred, venue is proper in the county where the child's parent, the child's guardian, or the prospective adoptive parent resides, or where the child is found. MCL 710.24(1) and 710.23d.

If there is more than one applicant for adoption, the petition for adoption shall be filed in the court in the county where the parent's parental rights were terminated or are pending termination. If both parents' parental rights were terminated at different times and in different courts, an adoption petition shall be filed where parental rights were first terminated. MCL 710.24(2).

If a petition to adopt is filed in a county other than the county where the petitioner resides or the prospective adoptee is found, the chief judge of the court may, upon motion, enter an order transferring jurisdiction of the matter to the court of the county in which the petitioner resides or the prospective adoptee is found. MCL 710.24(3).

CHAPTER 4

Jurisdiction, Venue, and Petition Requirements

4.6 Petition Requirements

Effective December 28, 2004, 2004 PA 487 amended MCL 710.24. On page 136 replace the first paragraph and quote with the following text:

In order to adopt a child, the adoptive parent or parents must file a petition for adoption. MCL 710.24(1)–(3) govern the filing of petitions:

“(1) If a person desires to adopt a child or an adult and to bestow upon the adoptee his or her family name, or to adopt a child or an adult without a name change, with the intent to make the adoptee his or her heir, that person, together with his wife or her husband, if married, shall file a petition with the court of the county in which the petitioner resides or where the adoptee is found or, if the petitioner and adoptee reside out of state, where the parent’s parental rights were terminated or are pending termination. If both parents’ parental rights were terminated at different times and in different courts, a petition filed under this section shall be filed in the court of the county where parental rights were first terminated. If there has been a temporary placement of the child, the petition for adoption shall be filed with the court that received the report described in [MCL 710.23d(2)*].

“(2) In an adoption proceeding in which there is more than 1 applicant, the petition for adoption shall be filed with the court of the county where the parent’s parental rights were terminated or are pending termination. If both parents’ parental rights were terminated at different times and in different courts, a petition filed under this section shall be filed in the court of the county where parental rights were first terminated.

“(3) If a petition to adopt is filed in a county other than that in which the petitioner resides or the prospective adoptee is found, the chief judge of the court may, upon motion, enter an order transferring jurisdiction of the matter to the court of the county in which the petitioner resides or the prospective adoptee is found.”

*See Section 5.2 for more information on MCL 710.23d.

CHAPTER 4

Jurisdiction, Venue, and Petition Requirements

4.6 Petition Requirements

D. Filing and Notice Requirements

Effective December 28, 2004, 2004 PA 487 amended MCL 710.24. On page 140 replace the first paragraph with the following text:

When there is one applicant for adoption, venue is proper in adoption proceedings in the county where the following circumstances exist:

- the petitioner resides; or
- the adoptee is found; or
- if the petitioner and adoptee reside out of state, where the parent's parental rights were terminated or are pending termination; or
- if both parents' parental rights were terminated at different times and in different courts, in the county where parental rights were first terminated. MCL 710.24(1).

If a temporary placement of the child has already occurred, venue is proper in the county where the child's parent, the child's guardian, or the prospective adoptive parent resides, or where the child is found. MCL 710.24(1) and 710.23d.

If there is more than one applicant for adoption, the petition for adoption shall be filed in the court in the county where the parent's parental rights were terminated or are pending termination. If both parents' parental rights were terminated at different times and in different courts, an adoption petition shall be filed where parental rights were first terminated. MCL 710.24(2).

If a petition to adopt is filed in a county other than the county where the petitioner resides or the prospective adoptee is found, the chief judge of the court may, upon motion, enter an order transferring jurisdiction of the matter to the court of the county in which the petitioner resides or the prospective adoptee is found. MCL 710.24(3).

CHAPTER 4

Jurisdiction, Venue, and Petition Requirements

4.6 Petition Requirements

E. Interested Parties

Effective December 28, 2004, 2004 PA 487 amended MCL 710.24a. On page 141, replace quoted subsection (a) with the following text:

“(a) The petitioner or petitioners.”

CHAPTER 5

Temporary Placements, Investigation Reports, and the Safe Delivery of Newborns

5.4 Resolving Custody Disputes After a Temporary Placement

B. Hearing to Determine Custody

Effective December 28, 2004, 2004 PA 487 amended MCL 710.24a(5). Near the top of page 170, replace quoted subsection (g) with the following text:

“(g) The guardian ad litem of any interested party, if a guardian ad litem has been appointed.”

CHAPTER 6

Formal Placement and Action on the Adoption Petition

6.4 Granting or Denying the Adoption Petition

A. Granting the Adoption Petition

Insert the following text on page 200, after the sentence beginning “No formal hearing is required . . .”:

Effective December 28, 2004,* the court may allow the child to attend his or her adoption hearing. MCL 710.23a(5).

*2004 PA 487.

Effective December 28, 2004, 2004 PA 487 amended MCL 710.56. Replace the quotation of MCL 710.56(2) with the following text:

MCL 710.56(2)–(4) state:

“(2) Except as provided in subsection (3), if a petition for rehearing or an appeal as of right from an order terminating parental rights has been filed, the court shall not order an adoption until 1 of the following occurs:

“(a) The petition for rehearing is granted, and at the rehearing the order terminating parental rights is not modified or set aside, and subsequently the period for appeal as of right to the court of appeals has expired without an appeal being filed.

“(b) The petition for rehearing is denied and the period for appeal as of right to the court of appeals has expired without an appeal being filed.

“(c) The court of appeals affirms the order terminating parental rights.

“(3) If an application for leave to appeal has been filed with the supreme court, the court shall not order an adoption until 1 or more of the following occurs:

“(a) The application for leave to appeal is denied.

“(b) The supreme court affirms the order terminating parental rights.

“(4) If a motion brought under [MCL 710.45] has been filed, the court shall not order an adoption until 1 of the following occurs:

“(a) The motion is decided and subsequently the period for appeal as of right to the court of appeals has expired without an appeal being filed.

“(b) The motion is decided, an appeal as of right to the court of appeals has been filed, the court of appeals issues an opinion, and subsequently the period for filing an application for leave to the supreme court has expired without an application being filed.

“(c) The supreme court denies an application for leave or, if an application is granted, the supreme court issues an opinion.”

CHAPTER 6

Formal Placement and Action on the Adoption Petition

6.8 Adult Adoption

Effective December 28, 2004, 2004 PA 487 amended MCL 710.24a. On page 208, replace quoted subsection (a) with the following text:

“(a) The petitioner or petitioners.”

CHAPTER 7

Rehearings, Appeals, Rescissions, and Dissolutions

7.1 Purposes of the Adoption Code

Effective December 28, 2004, 2004 PA 487 amended MCL 710.21a. The amendments expanded the purposes of the Adoption Code. On page 212, add the following text to the quoted statute before Section 7.2:

“(d) To achieve permanency and stability for adoptees as quickly as possible.

“(e) To support the permanency of a finalized adoption by allowing all interested parties to participate in proceedings regarding the adoptee.”

CHAPTER 7

Rehearings, Appeals, Rescissions, and Dissolutions

7.3 Appeals to the Family Division of Circuit Court

A. Consent to Adoption Withheld

1. Motion to Determine if Arbitrary and Capricious

On page 219, after the quote of MCL 710.45(2)(a)–(b) insert the following text:

The motion must be filed along with the adoption petition. MCL 710.45(1). MCL 710.45(4) states:

“In an adoption proceeding in which there is more than 1 applicant, the petition for adoption shall be filed with the court of the county where the parent’s parental rights were terminated or are pending termination. If both parents’ parental rights were terminated at different times and in different courts, a petition filed under this section shall be filed in the court of the county where parental rights were first terminated.”

The court shall provide notice of a motion to determine if a denial of consent was arbitrary and capricious to all of the following:

- ◆ The petitioner or petitioners.
- ◆ The adoptee, if over 14 years of age.
- ◆ A minor parent, adult parent, or surviving parent of an adoptee, unless one or more of the following apply:
 - the parental rights of the parent have been terminated.
 - a guardian of the adoptee, with specific authority to consent to adoption, has been appointed.
 - a guardian of the parent, with specific authority to consent to adoption, has been appointed.
 - the parent has released parental rights.
 - the parent has consented to the adoption.
- ◆ The FIA or child placing agency to which the adoptee has been, or is proposed to be, released or committed by an order of the court.

- ♦ A parent, guardian, or guardian ad litem of an unemancipated minor parent of the adoptee.
- ♦ The court with permanent custody of the adoptee.
- ♦ A child placing agency of another state or country that has the authority to consent to adoption.
- ♦ The guardian or guardian ad litem of an interested party.
- ♦ The prospective adoptee's guardian ad litem if one has been appointed during a child protection proceeding.
- ♦ The prospective adoptive parent who received consent to adopt.

MCL 710.24a(1) and MCL 710.45(5).

CHAPTER 7

Rehearings, Appeals, Rescissions, and Dissolutions

7.3 Appeals to the Family Division of Circuit Court

A. Consent to Adoption Withheld

3. Disposition

Effective December 28, 2004, 2004 PA 486 amended MCL 710.45. If the court finds clear and convincing evidence that the decision to withhold consent was arbitrary and capricious, the court is required to issue a written decision. On page 221, replace the quote of MCL 710.45(6) with the following text:

On the other hand, MCL 710.45(8)* states:

“If the court finds by clear and convincing evidence that the decision to withhold consent was arbitrary and capricious, the court shall issue a written decision and may terminate the rights of the appropriate court, child placing agency, or [FIA] and may enter further orders in accordance with this chapter or section 18 of chapter XIIA as the court considers appropriate. In addition, the court may grant to the petitioner reimbursement for petitioner’s costs of preparing, filing, and arguing the motion alleging the withholding of consent was arbitrary and capricious, including a reasonable allowance for attorney fees.”

*MCL
710.45(6) has
been
renumbered as
MCL
710.45(8).

CHAPTER 7

Rehearings, Appeals, Rescissions, and Dissolutions

7.3 Appeals to the Family Division of Circuit Court

A. Consent to Adoption Withheld

3. Disposition

Insert the following text before subsection (B) on page 222:

Effective December 28, 2004, the court's decision on a motion to determine if denial of consent was arbitrary and capricious is appealable by right to the Court of Appeals. MCL 710.45(10), as amended by 2004 PA 486.

*See Section 7.4(A) for the procedures for an appeal of right.

CHAPTER 8

Direct Placement Adoption, Step-Parent Adoption, Relative Adoption, and “Legal Risk” Placement

8.2 Requirements for Attorneys and Adoption Facilitators

A. Adoption Attorney

Effective December 28, 2004, 2004 PA 487 amended MCL 710.22. The amendments eliminated the requirements for an “adoption attorney” that were set forth in the Adoption Code. On page 242, replace the quotation of MCL 710.22(b) with the following text:

MCL 710.22(b) defines “adoption attorney” as “an attorney acting as counsel in an adoption proceeding or case.”

CHAPTER 8

Direct Placement Adoption, Step-Parent Adoption, Relative Adoption, and “Legal Risk” Placement

8.4 Relative Adoption

Effective December 28, 2004, 2004 PA 487 amended MCL 710.22. The amendments added a definition of “relative.” On page 251 insert the following text at the beginning of this section:

MCL 710.22(t) defines “relative” as “an individual who is related to the child within the fifth degree by marriage, blood, or adoption.”

Update: Child Protective Proceedings Benchbook (Revised Edition)

CHAPTER 4

Jurisdiction, Venue, & Transfer

4.16 Continuation of Family Division Jurisdiction After Child Becomes 18 Years of Age

Replace the last sentence of the third paragraph, which begins on page 112 and ends on page 113, with the following sentence:

If parental rights have been terminated, the court must continue to review the case while a child is in placement or under the jurisdiction, supervision, or control of the Michigan Children's Institute. MCL 712A.19c(1)–(2) and MCR 3.978(C).

CHAPTER 5

Notice & Time Requirements

5.2 Establishing Paternity

On page 130, immediately before Section 5.3, insert the following text:

Placement of child with putative father's parent. Effective December 28, 2004, 2004 PA 475 amended MCL 712A.13a to allow a court to place a child with a putative father's parent in some circumstances. MCL 712A.13a(1)(j) states, in part:

“A child may be placed with the parent of a man whom the court has found probable cause to believe is the putative father if there is no man with legally established rights to the child. A placement with the parent of a putative father under this subdivision is not to be construed as a finding of paternity or to confer legal standing on the putative father. . . .”

CHAPTER 6

Petitions & Preliminary Inquiries

6.6 Preliminary Inquiries

Before the last full paragraph on page 170, insert the following text:

Effective December 28, 2004,* “relative” means:

* 2004 PA 475.

“an individual who is at least 18 years of age and related to the child by blood, marriage, or adoption, as grandparent, great-grandparent, great-great-grandparent, aunt or uncle, great-aunt or great-uncle, great-great-aunt or great-great-uncle, sibling, stepsibling, nephew or niece, first cousin or first cousin once removed, and the spouse of any of the above, even after the marriage has ended by death or divorce. A child may be placed with the parent of a man whom the court has found probable cause to believe is the putative father if there is no man with legally established rights to the child. A placement with the parent of a putative father under this subdivision is not to be construed as a finding of paternity or to confer legal standing on the putative father.” MCL 712A.13a(1)(j).

CHAPTER 7

Preliminary Hearings

7.6 Powers and Duties of Lawyer-Guardians Ad Litem

Effective December 28, 2004, 2004 PA 475 amended MCL 712A.17d. LGALs are now required to review the agency case file prior to disposition and before a hearing on termination of parental rights. In addition, an LGAL must review updated materials provided to the court and parties, and a child's supervising agency must provide the child's LGAL certain information not later than five days before a hearing. The requirement that LGALs were to meet with the children before each hearing has been modified to require the LGAL to meet with the children before specific hearings. Beginning on page 186, replace the quote of MCL 712A.17d with the following:

“(1) A lawyer-guardian ad litem’s duty is to the child, and not the court. The lawyer-guardian ad litem’s powers and duties include at least all of the following:

- (a) The obligations of the attorney-client privilege.
- (b) To serve as the independent representative for the child’s best interests, and be entitled to full and active participation in all aspects of the litigation and access to all relevant information regarding the child.
- (c) To determine the facts of the case by conducting an independent investigation including, but not limited to, interviewing the child, social workers, family members, and others as necessary, and reviewing relevant reports and other information. The agency case file shall be reviewed before disposition and before the hearing for termination of parental rights. Updated materials shall be reviewed as provided to the court and parties. The supervising agency shall provide documentation of progress relating to all aspects of the last court ordered treatment plan, including copies of evaluations and therapy reports and verification of parenting time not later than 5 business days before the scheduled hearing.
- (d) To meet with or observe the child and assess the child’s needs and wishes with regard to the representation and the issues in the case in the following instances:
 - (i) Before the pretrial hearing.

- (ii) Before the initial disposition, if held more than 91 days after the petition has been authorized.
 - (iii) Before a dispositional review hearing.
 - (iv) Before a permanency planning hearing.
 - (v) Before a post-termination review hearing.
 - (vi) At least once during the pendency of a supplemental petition.
 - (vii) At other times as ordered by the court. Adjourned or continued hearings do not require additional visits unless directed by the court.
- (e) The court may allow alternative means of contact with the child if good cause is shown on the record.
- (f) To explain to the child, taking into account the child's ability to understand the proceedings, the lawyer-guardian ad litem's role.
- (g) To file all necessary pleadings and papers and independently call witnesses on the child's behalf.
- (h) To attend all hearings and substitute representation for the child only with court approval.
- (i) To make a determination regarding the child's best interests and advocate for those best interests according to the lawyer-guardian ad litem's understanding of those best interests, regardless of whether the lawyer-guardian ad litem's determination reflects the child's wishes. The child's wishes are relevant to the lawyer-guardian ad litem's determination of the child's best interests, and the lawyer-guardian ad litem shall weigh the child's wishes according to the child's competence and maturity. Consistent with the law governing attorney-client privilege, the lawyer-guardian ad litem shall inform the court as to the child's wishes and preferences.
- (j) To monitor the implementation of case plans and court orders, and determine whether services the court ordered for the child or the child's family are being provided in a timely manner and are accomplishing their purpose. The lawyer-guardian ad litem shall inform the court if the services are not being provided in a timely manner, if the family fails to take advantage of the services, or if the services are not accomplishing their intended purpose.

(k) Consistent with the rules of professional responsibility, to identify common interests among the parties and, to the extent possible, promote a cooperative resolution of the matter through consultation with the child's parent, foster care provider, guardian, and caseworker.

(l) To request authorization by the court to pursue issues on the child's behalf that do not arise specifically from the court appointment.

“(2) If, after discussion between the child and his or her lawyer-guardian ad litem, the lawyer-guardian ad litem determines that the child's interests as identified by the child are inconsistent with the lawyer-guardian ad litem's determination of the child's best interests, the lawyer-guardian ad litem shall communicate the child's position to the court. If the court considers the appointment appropriate considering the child's age and maturity and the nature of the inconsistency between the child's and the lawyer-guardian ad litem's identification of the child's interests, the court may appoint an attorney for the child. An attorney appointed under this subsection serves in addition to the child's lawyer-guardian ad litem.

“(3) The court or another party to the case shall not call a lawyer-guardian ad litem as a witness to testify regarding matters related to the case. The lawyer-guardian ad litem's file of the case is not discoverable.”

*Effective
December 28,
2004.

An “agency case file” means “the current file from the agency providing direct services to the child, that can include the child protective services file if the child has not been removed from the home or the family independence agency or contract agency foster care file as defined under 1973 PA 116, MCL 722.111 to 722.128.” MCL 712A.13a(1)(b).*

CHAPTER 8

Placement of a Child

8.1 Requirements to Release or Place a Child Pending Trial

B. Requirements to Place a Child Outside His or Her Home

Transfer of case from Children's Protective Services (CPS) to Foster Care Services.

On the bottom of page 203, replace the last three sentences with the following text:

Foster care services or agency workers complete the Initial Services Plan and arrange parenting time and, if necessary, sibling visits. If the agency becomes aware of additional abuse or neglect by a parent, guardian, custodian, nonparent adult, foster parent, or other person while the child is under the court's jurisdiction, and if the abuse or neglect is substantiated, the agency must file a supplemental petition. See MCL 712A.19(1) and FIA *Services Manual*, CFF 722-13 and CFP 716-9.

CHAPTER 8

Placement of a Child

8.2 Type of Placements Available

“Placement” defined.

Effective December 28, 2004, 2004 PA 475 amended MCL 712A.13(1)(a). Near the bottom of page 204, replace the definition of agency with the following text:

“Agency” means “a public or private organization, institution, or facility that is performing the functions under part D of title IV of the social security act, 42 USC 651 to 655, 656 to 657, 658a to 660, and 663 to 669b, or that is responsible under court order or contractual arrangement for a juvenile’s care and supervision.” MCL 712A.13a(1)(a).

CHAPTER 8

Placement of a Child

8.2 Type of Placements Available

Relative placements.

Before the last full paragraph on page 205, insert the following text:

Effective December 28, 2004, 2004 PA 475 amended MCL 712A.13a to add a definition of “relative” and to allow a court to place a child with a putative father’s parent in some circumstances. The definition of “relative” contained in new MCL 712A.13a(1)(j) is broader than that contained in MCL 722.111(1)(o) quoted in the paragraph above. MCL 712A.13a(1)(j) states:

“‘Relative’ means an individual who is at least 18 years of age and related to the child by blood, marriage, or adoption, as grandparent, great-grandparent, great-great-grandparent, aunt or uncle, great-aunt or great-uncle, great-great-aunt or great-great-uncle, sibling, stepsibling, nephew or niece, first cousin or first cousin once removed, and the spouse of any of the above, even after the marriage has ended by death or divorce. A child may be placed with the parent of a man whom the court has found probable cause to believe is the putative father if there is no man with legally established rights to the child. A placement with the parent of a putative father under this subdivision is not to be construed as a finding of paternity or to confer legal standing on the putative father.”

CHAPTER 8

Placement of a Child

8.14 Required Procedures for Appeals of Changes of Foster Care Placements

A. Investigation by Foster Care Review Board

Effective December 28, 2004, 2004 PA 475 amended MCL 712A.13b. The amendments changed the time requirements governing the Foster Care Review Board's investigation. Replace the first paragraph on page 222 with the following text:

Within seven days of receiving an appeal from foster parents, the Foster Care Review Board must investigate the change or proposed change in placement. Within three days after completion of the investigation, the FCRB must report its findings and recommendations to the court or the MCI Superintendent (if the child is under the jurisdiction, supervision, or control of the MCI), foster care parents, parents, and the agency. MCL 712A.13b(3).

CHAPTER 13

Initial Dispositions

13.7 Case Service Plans

Effective December 28, 2004, 2004 PA 475 amended MCL 712A.13b. The amendments revised the definition of “agency” under MCL 712A.13a(1)(a). Replace the definition of “agency” in the fourth sentence in the last full paragraph at the bottom of page 316 with the following text:

‘Agency’ means a public or private organization, institution, or facility that is performing the functions under part D of title IV of the social security act, 42 USC 651 to 655, 656 to 657, 658a to 660, and 663 to 669b, or that is responsible under court order or contractual arrangement for a juvenile’s care and supervision.”

CHAPTER 13

Initial Dispositions

13.9 Dispositional Options Available to Court

B. In-Home Placement With Supervision

Replace the definition of “related” beginning on the bottom of page 320 and continuing on page 321 with the following text:

As used in MCL 712A.18(1)(b)* “related” means:

“an individual who is at least 18 years of age and related to the child by blood, marriage, or adoption, as grandparent, great-grandparent, great-great-grandparent, aunt or uncle, great-aunt or great-uncle, great-great-aunt or great-great-uncle, sibling, stepsibling, nephew or niece, first cousin or first cousin once removed, and the spouse of any of the above, even after the marriage has ended by death or divorce. A child may be placed with the parent of a man whom the court has found probable cause to believe is the putative father if there is no man with legally established rights to the child. This placement of the child with the parent of a man whom the court has found probable cause to believe is the putative father is for the purposes of placement only and is not to be construed as a finding of paternity or to confer legal standing.”

*Effective
December 28,
2004. 2004 PA
475.

CHAPTER 13

Initial Dispositions

13.15 Additional Allegations of Abuse or Neglect

On the bottom of page 327, replace the first paragraph and **Note** with the following text:

“If the agency becomes aware of additional abuse or neglect of a child who is under the jurisdiction of the court and if that abuse or neglect is substantiated as provided in the child protection law . . . , the agency shall file a supplemental petition with the court.”
MCL 712A.19(1).

CHAPTER 16

Dispositional Reviews & Review Hearings

In this chapter . . .

Effective December 28, 2004, 2004 PA 477 amended MCL 712A.19. On page 347, replace the first paragraph with the following text:

This chapter discusses the requirements for reviewing a court's initial dispositional order and compliance with the Case Service Plan. When a child has not been removed from his or her home, or when a child has been returned to his or her home following an initial removal, the court must conduct periodic review hearings to determine the family's progress toward rectifying conditions that brought the child within the court's jurisdiction.

On page 347, delete the second-to-last paragraph. The amendments to MCL 712A.19(2) deleted the requirement that the court review certain factors at a dispositional review hearing.

CHAPTER 16

Dispositional Reviews & Review Hearings

16.1 Time Requirements for Review Hearings

Effective December 28, 2004, 2004 PA 477 amended MCL 712A.19. On page 348 change the title of section 16.1, as indicated above.

Replace the bulleted list on pages 348–349 with the following:

- Except as explained in the third bullet, below, a review hearing must be held not more than 182 days after the child's removal from his or her home and no later than every 91 days after that for the first year that the child is subject to the jurisdiction of the court. After the first year that the child has been removed from his or her home, a review hearing shall be held not more than 182 days from the immediately preceding review hearing before the end of that first year and no later than every 182 days from each preceding hearing until the case is dismissed. A review hearing shall not be cancelled or delayed beyond the number of days required, regardless of whether a petition to terminate parental rights or another matter is pending. MCL 712A.19(3).
- A permanency planning hearing must be conducted within 12 months after the child was removed from his or her home. Subsequent permanency planning hearings shall be held no later than every 12 months after each preceding permanency planning hearing during the continuation of foster care. A permanency planning hearing shall not be canceled or delayed beyond the number of months required by MCL 712A.19a(1) or days required under MCL 712A.19a(2),* regardless of whether there is a petition for termination of parental rights or any other matter pending. MCL 712A.19a(1) as amended by 2004 PA 473 and MCL 712A.19c(1) as amended by 2004 PA 476, effective December 28, 2004.
- If a child is under the care and supervision of an agency and is in a permanent foster family agreement* or is placed with a relative in a placement intended to be permanent, a review hearing must be held not more than 182 days after the child has been removed from his or her home and not later than 182 days after that as long as the child is subject to the jurisdiction of the court, the Michigan children's institute, or other agency. A review hearing shall not be canceled or delayed beyond the number of days required, regardless of whether a petition to terminate parental rights or another matter is pending. MCL 712A.19(4).

*MCL 712A.19a(2) requires a permanency planning hearing to be held within 30 days after a judicial determination that reasonable efforts at reunification are not required.

*See Section 13.9(C) for a list of the required parties to a permanent foster family agreement.

*Effective
December 28,
2004. 2004 PA
476.

- Unless a child is under the care and supervision of an agency and is in a permanent foster family agreement or is placed with a relative in a placement intended to be permanent, a review hearing must be held not more than 91 days following termination of parental rights to the child and no later than every 91 days thereafter for the first year following termination of parental rights to that child. If a child remains in a placement for more than one year following termination of parental rights to the child, a review hearing shall be held no later than 182 days from the immediately preceding review hearing before the end of the first year and not later than every 182 days from each preceding review hearing thereafter until the case is dismissed. A review hearing shall not be canceled or delayed beyond the number of days required, regardless of whether any other matters are pending. MCL 712A.19c(1).*

If a child remains in his or her home, the court must conduct review hearings. MCL 712A.19(2) states in part:

*See the update
above, for
information on
subsections (3)
and (4).

“Except as provided in subsections (3) and (4),* if a child subject to the jurisdiction of the court remains in his or her home, a review hearing shall be held not more than 182 days from the date a petition is filed to give the court jurisdiction over the child and no later than every 91 days after that for the first year that the child is subject to the jurisdiction of the court. After the first year that the child is subject to the jurisdiction of the court, a review hearing shall be held no later than 182 days from the immediately preceding review hearing before the end of that first year and no later than every 182 days from each preceding review hearing thereafter until the case is dismissed. A review hearing under this subsection shall not be canceled or delayed beyond the number of days required in this subsection, regardless of whether a petition to terminate parental rights or another matter is pending.”

CHAPTER 16

Dispositional Reviews & Review Hearings

16.1 Time Requirements for Review Hearings

Replace the second paragraph on page 350 with the following text:

Combined permanency planning hearing and review hearing. If proper notice for a permanency planning hearing is provided, then the permanency planning hearing may be combined with a review hearing, but this must occur no later than 12 months from the removal of the child from his or her home, from the preceding permanency planning hearing, or from the number of days required under MCL 712A.19a(2).

CHAPTER 16

Dispositional Reviews & Review Hearings

16.6 Records of Dispositional Review Hearings

Effective December 28, 2004, 2004 PA 477 amended MCL 712A.19. Delete the last sentence of this section. MCL 712A.19(2) no longer provides for a rehearing that must be recorded stenographically.

CHAPTER 16

Dispositional Reviews & Review Hearings

16.7 Progress Reviews of Children at Home

Effective December 28, 2004, 2004 PA 477 amended MCL 712A.19(2) to require dispositional review hearings when a child remains in his or her home. On page 353, replace the first paragraph of this section with the following:

MCL 712A.19(2) requires a court to conduct a review hearing when a child remains in his or her home. That statute states:

“Except as provided in subsections (3) and (4), if a child subject to the jurisdiction of the court remains in his or her home, a review hearing shall be held not more than 182 days from the date a petition is filed to give the court jurisdiction over the child and no later than every 91 days after that for the first year that the child is subject to the jurisdiction of the court. After the first year that the child is subject to the jurisdiction of the court, a review hearing shall be held no later than 182 days from the immediately preceding review hearing before the end of that first year and no later than every 182 days from each preceding review hearing thereafter until the case is dismissed. A review hearing under this subsection shall not be canceled or delayed beyond the number of days required in this subsection, regardless of whether a petition to terminate parental rights or another matter is pending. Upon motion by any party or in the court’s discretion, a review hearing may be accelerated to review any element of the case service plan prepared according to section 18f of this chapter.”

CHAPTER 17

Permanency Planning Hearings

In this chapter . . .

On page 357, replace the introductory text with the following:

This chapter discusses permanency planning hearings. The purpose of permanency planning hearings is to review and finalize a permanency plan for a child in foster care. A court must hold a permanency planning hearing no later than 12 months after a child was removed from his or her home. In cases of serious abuse or if a parent has had his or her parental rights to another child terminated, the Family Independence Agency (FIA) must file a petition in court. See Section 2.22. In such cases, the court must hold a permanency planning hearing no later than 30 days after it finds that “reasonable efforts” to reunify the family are not required. The court’s options following a permanency planning hearing are set forth in Sections 17.1 and 17.5. For a description of all permanency options, see *FIA Services Manual*, CFF 722-7. Federal law and regulation require the agency to file or join in filing a petition requesting termination of parental rights in certain circumstances. See Section 17.6.

CHAPTER 17

Permanency Planning Hearings

17.3 Time Requirements

Effective December 28, 2004, 2004 PA 473 amended MCL 712A.19a and 2004 PA 476 amended MCL 712A.19c. After the April 2004 update to page 362, insert the following text.

Statutory time requirements. Except as provided in MCL 712A.19a(2), a permanency planning hearing must be held within 12 months after the child was removed from his or her home. MCL 712A.19a(1) and MCL 712A.19c(1). A permanency planning hearing shall not be canceled or delayed beyond 12 months, regardless of whether there is a petition for termination of parental rights or any other matter pending. *Id.*

Replace the last paragraph on page 362 and all of the text on page 363 with the following text:

Circumstances requiring a permanency planning hearing within 28 days after adjudication. MCR 3.976(B)(1) requires a court to conduct a permanency planning hearing within 28 days after a petition has been adjudicated if the parent's rights to another child were terminated involuntarily, or if a parent has been found to have abused a child or a child's sibling and the abuse included one or more of the circumstances listed in MCL 712A.19a(2). MCL 712A.19a(2) states:

“(2) The court shall conduct a permanency planning hearing within 30 days after there is a judicial determination that reasonable efforts to reunite the child and family are not required. Reasonable efforts to reunify the child and family must be made in all cases except if any of the following apply:

(a) There is a judicial determination that the parent has subjected the child to aggravated circumstances as provided in section 18(1) and (2) of the child protection law, 1975 PA 238, MCL 722.638.*

(b) The parent has been convicted of 1 or more of the following:

(i) Murder of another child of the parent.

(ii) Voluntary manslaughter of another child of the parent.

(iii) Aiding or abetting in the murder of another child of the parent or voluntary manslaughter of

*See Section 2.22 for a discussion of these statutory provisions.

another child of the parent, the attempted murder of the child or another child of the parent, or the conspiracy or solicitation to commit the murder of the child or another child of the parent.

(iv) A felony assault that results in serious bodily injury to the child or another child of the parent.

(c) The parent has had rights to the child's siblings involuntarily terminated.”

Note: The court rule requires the permanency planning hearing to be held within 28 days of the adjudication while the statute requires the permanency planning hearing to be held within 30 days of the court's finding that reasonable efforts to reunite the child and family are not required.

*As amended
by 2004 PA
477.

Review hearings following a permanency planning hearing. Except as explained in the next paragraph, the court must conduct a review hearing not more than 182 days after the child's removal from his or her home and no later than every 91 days after that for the first year that the child is subject to the jurisdiction of the court. After the first year that the child has been removed from his or her home, the court must hold a review hearing not more than 182 days from the immediately preceding review hearing and no later than 182 days from each preceding review hearing thereafter until the case is dismissed. MCL 712A.19(3).*

*As amended
by 2004 PA
477.

If a child is under the care and supervision of an agency and is in a “permanent foster family agreement” or is placed with a relative in a placement intended to be permanent, the court must hold review hearings not more than 182 days after the child has been removed from his or her home and no later than every 182 days thereafter, as long as the child remains subject to the jurisdiction of the court, the Michigan Children's Institute, or other agency. MCL 712A.19(4).*

A review hearing shall not be canceled or delayed beyond the 182 days, regardless of whether a petition to terminate parental rights or another matter is pending. MCL 712A.19(3)–(4).

*As amended
by 2004 PA 473
and 476.

Subsequent permanency planning hearings. As long as a child is in foster care, subsequent permanency planning hearings must be held no later than 12 months after each preceding permanency planning hearing. MCL 712A.19a(1) and MCL 712A.19c(1).* A permanency planning hearing shall not be canceled or delayed beyond 12 months, or beyond 30 days if the court has determined that efforts to reunite the child and family are not required, regardless of whether there is a petition for termination of parental rights or any other matter pending. *Id.*

Combined permanency planning and review hearings. A permanency planning hearing may be combined with a dispositional review hearing if

proper notice of the permanency planning hearing is provided and the court adheres to the time lines for permanency planning and review hearings. MCL 712A.19a(1) and MCL 712A.19c(1).

CHAPTER 17

Permanency Planning Hearings

17.5 Court's Options Following Permanency Planning Hearings

Replace the first sentence after the quote of MCR 3.976(E)(3) near the top of page 369 with the following text:

Effective December 28, 2004, 2004 PA 473 amended MCL 712A.19a. MCL 712A.19a(7) contains substantially similar language to MCR 3.976(E)(3). However, MCL 712A.19a(7)(b) provides that the court may place a child in foster care on a long-term basis if it is in the child's best interest *based upon compelling reasons*. MCR 3.976(E)(3) does not contain the compelling reasons requirement.

CHAPTER 19

Post-Termination Review Hearings

19.1 Purpose of and Time Requirements for Post-Termination Review Hearings

Effective December 28, 2004, 2004 PA 476 amended MCL 712a.19c. This statute now applies when a child remains in a “placement” (rather than “foster care”) following termination of parental rights. The amendments also impose new time requirements for post-termination review and permanency planning hearings. On pages 421 and 422, replace the quote of MCL 712A.19c with the following:

“(1) Except as provided in section 19(4)* and subject to subsection (2), if a child remains in placement following the termination of parental rights to the child, the court shall conduct a review hearing not more than 91 days after the termination of parental rights and no later than every 91 days after that hearing for the first year following termination of parental rights to the child. If a child remains in a placement for more than 1 year following termination of parental rights to the child, a review hearing shall be held no later than 182 days from the immediately preceding review hearing before the end of the first year and no later than every 182 days from each preceding review hearing thereafter until the case is dismissed. A review hearing under this subsection shall not be canceled or delayed beyond the number of days required in this subsection, regardless of whether any other matters are pending. Upon motion by any party or in the court’s discretion, a review hearing may be accelerated to review any element of the case. The court shall conduct the first permanency planning hearing within 12 months from the date that the child was originally removed from the home. Subsequent permanency planning hearings shall be held within 12 months of the preceding permanency planning hearing. If proper notice for a permanency planning hearing is provided, a permanency planning hearing may be combined with a review hearing held under section 19(2) to (4) of this chapter. A permanency planning hearing under this section shall not be canceled or delayed beyond the number of months required in this subsection, regardless of whether any other matters are pending. At a hearing under this section, the court shall review all of the following:

- (a) The appropriateness of the permanency planning goal for the child.
- (b) The appropriateness of the child’s placement.

*§19(4) contains time requirements for review hearings when a child is subject to a “permanent foster family agreement” or is placed with a relative in a placement intended to be permanent. See Section 16.1.

(c) The reasonable efforts being made to place the child for adoption or in other permanent placement in a timely manner.

“(2) This section applies only to a child’s case in which parental rights to the child were either terminated as the result of a proceeding under section 2(b) of this chapter or a similar law of another state or terminated voluntarily following the initiation of a proceeding under section 2(b) of this chapter or a similar law of another state. This section applies as long as the child is subject to the jurisdiction, control, or supervision of the court or of the Michigan children’s institute or other agency.”

CHAPTER 19

Post-Termination Review Hearings

19.4 Termination of Jurisdiction

Continuation of a child's placement.

Replace the last sentence of the last full paragraph on page 424 with the following text:

If parental rights have been terminated, the court must continue to review the case while a child is in placement or under the jurisdiction, supervision, or control of the Michigan Children's Institute. MCL 712A.19c(1)–(2) and MCR 3.978(C).

Update: Crime Victim Rights Manual

CHAPTER 2

The Legal Bases for Crime Victim Rights in Michigan

2.8 Assessments and Funding

A. Assessments of Convicted and Adjudicated Offenders

Insert the following text on page 25 immediately before subsection (B):

Effective January 1, 2005, 2004 PA 224 authorizes circuit and district courts to institute or adopt a drug treatment court. MCL 600.1062(1). Family divisions are also authorized to institute or adopt a drug treatment court for juveniles. MCL 600.1062(2). If an offender is admitted to a drug treatment court, adjudication of his or her crime may be deferred. MCL 600.1070(1)(a)–(c). “In order to continue to participate in and successfully complete a drug treatment court program,” an offender must pay all crime victims rights assessments. MCL 600.1074(1)(d).

CHAPTER 6

Victim Consultation With the Prosecuting Attorney & Other Rights

6.4 Limitations on the Court's Authority to Utilize Informal Procedures in Juvenile Delinquency Cases

B. Required Procedures Before Removing the Case From the Adjudicative Process

On page 98, insert the following text at the bottom of the page:

*See the January 2005 update to Section 9.2 for more information.

Effective January 1, 2005, 2004 PA 224 authorizes circuit and district courts to institute or adopt a drug treatment court. MCL 600.1062(1). Family divisions are also authorized to institute or adopt a drug treatment court for juveniles. MCL 600.1062(2). If an offender is admitted to a drug treatment court, adjudication of his or her crime may be deferred. MCL 600.1070(1)(a)–(c). A crime victim and others must be permitted to submit a written statement to the court prior to an offender's admission to drug treatment court.* MCL 600.1068(4) provides:

“In addition to rights accorded a victim under the crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, the drug treatment court must permit any victim of the offense or offenses of which the individual is charged, any victim of a prior offense of which that individual was convicted, and members of the community in which either the offenses were committed or in which the defendant resides to submit a written statement to the court regarding the advisability of admitting the individual into the drug treatment court.”

CHAPTER 9

Victim Impact Statements & Other Post-Disposition Procedures

9.2 Using Victim Impact Statements at Sentencing or Disposition

D. Written Statements Regarding Admission of Offender to Drug Treatment Court

Add new sub-subsection (D) as indicated above and the following text to page 201 immediately before Section 9.3:

Adults and juveniles charged with criminal offenses may be eligible for admission to drug treatment court. MCL 600.1068.* To be eligible for admission to drug treatment court, “[t]he offense or offenses allegedly committed by the individual must be related to the abuse, illegal use, or possession of a controlled substance or alcohol”; an adult offender must plead guilty to, and a juvenile must admit responsibility for, the alleged offense or offenses on the record; the offender must waive certain rights; and the offender must sign a written agreement to participate in drug treatment court. MCL 600.1068(1)(a)–(d). In addition to the rights accorded a crime victim under the CVRA, MCL 600.1068(4) requires a drug treatment court to consider written statements submitted by a crime victim and other community members when deciding whether to admit the offender to drug treatment court. That statute states:

“In addition to rights accorded a victim under the crime victim’s rights act, 1985 PA 87, MCL 780.751 to 780.834, the drug treatment court must permit any victim of the offense or offenses of which the individual is charged, any victim of a prior offense of which that individual was convicted, and members of the community in which either the offenses were committed or in which the defendant resides to submit a written statement to the court regarding the advisability of admitting the individual into the drug treatment court.”

*Effective
January 1,
2005.

CHAPTER 12

The Relationship Between Criminal or Juvenile Proceedings & Civil Actions Filed by Crime Victims

12.2 Statutes of Limitations for Tort Actions

Insert the following text before the November 2002 update to page 298:

A plaintiff's claim of fraudulent concealment under MCL 600.5855 requires the plaintiff to establish that the conduct on which the fraudulent concealment claim is based prevented the plaintiff from knowledge of his or her claim against the defendant. *Doe v Roman Catholic Archbishop of the Archdiocese of Detroit*, ___ Mich App ___, ___ (2004). In *Doe*, the plaintiff claimed that the statute of limitations on his tort action should be tolled by the defendant's concealment of the plaintiff's claims against the defendant. *Doe, supra* at ___.

The plaintiff claimed that the defendant knew about and purposely concealed Burkholder's (a priest's) history of sexual abuse by moving the priest from diocese to diocese, and that this conduct prevented the plaintiff from knowing that other complaints had been lodged against Burkholder and that the plaintiff himself had legal recourse against the defendant. *Doe, supra* at ___. The Court of Appeals disagreed:

“[E]ven if plaintiff did not know for certain that defendant knew of Burkholder's abuse of other children, defendant's knowledge of Burkholder's abuse of other children was not required for plaintiff to be aware of his causes of action against defendant.

* * *

“It was not necessary for plaintiff to know of widespread abuse in the church for him to have had knowledge of his causes of action against defendant. Thus, even if defendant attempted to conceal the “widespread sexual abuse” problem from the public at large, this attempt could not have concealed from plaintiff his causes of action against defendant.” *Doe, supra* at ___.

The Court explained that the actions on which the plaintiff based his fraudulent concealment claim “amount[ed] to mere silence,” conduct that is insufficient to support an exception to the applicable statute of limitations on tort claims. Accordingly, the Court ruled that the plaintiff's claims were time-barred because the fraudulent concealment exception under MCL 600.5855 did not apply.

Update: Criminal Procedure Monograph 3—Misdemeanor Arraignments & Pleas (Revised Edition)

Part A—Commentary on Misdemeanor Arraignments

3.21 A Crime Victim's Rights Following an Arraignment

Victim impact statements.

On page 35, insert the following text before the paragraph beginning **“Restitution is required of any defendant. . .”**:

Effective January 1, 2005, 2004 PA 224 authorizes circuit and district courts to institute or adopt a drug treatment court. MCL 600.1062(1). Family divisions are also authorized to institute or adopt a drug treatment court for juveniles. MCL 600.1062(2). If an offender is admitted to a drug treatment court, adjudication of his or her crime may be deferred. MCL 600.1070(1)(a)–(c). A crime victim and others must be permitted to submit a written statement to the court prior to an offender's admission to drug treatment court. MCL 600.1068(4) provides:

“In addition to rights accorded a victim under the crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, the drug treatment court must permit any victim of the offense or offenses of which the individual is charged, any victim of a prior offense of which that individual was convicted, and members of the community in which either the offenses were committed or in which the defendant resides to submit a written statement to the court regarding the advisability of admitting the individual into the drug treatment court.”

Part B—Commentary on Pleas

3.37 Pleas Under Advisement

Insert the following language on page 61 after the paragraph beginning “Deferred sentencing provisions”:

Effective January 1, 2005, 2004 PA 224 authorizes circuit and district courts to institute or adopt a drug treatment court. MCL 600.1062(1). Family divisions are also authorized to institute or adopt a drug treatment court for juveniles. MCL 600.1062(2). Criteria for admission, operating requirements, and procedural information about drug treatment courts appear in a new chapter of the revised judiciary act created by 2004 PA 224. See MCL 600.1060 *et seq.*

Effective January 1, 2005, 2004 PA 225 makes participation in a drug treatment court a term or condition that may be imposed on a defendant under §7411 deferral. MCL 333.7411(1).

♦ MCL 750.350a(4), Parental Kidnapping Act

Insert the following language after the first paragraph near the top of page 62:

- Effective January 1, 2005, 2004 PA 223 makes participation in a drug treatment court a term or condition that may be imposed on a defendant in deferral under MCL 750.350a. MCL 750.350a(4).

♦ MCL 769.4a, Spouse Abuse Act

Insert the following language after the third paragraph on page 62:

- Effective January 1, 2005, 2004 PA 220 makes participation in a drug treatment court a term or condition that may be imposed on a defendant in deferral under MCL 769.4a. MCL 769.4a(3).

♦ MCL 762.11, Holmes Youthful Trainee Act

Insert the following language after the second paragraph on page 63:

- Effective January 1, 2005, 2004 PA 226 makes participation in a drug treatment court a term or condition that may be imposed on a defendant in deferral under the youthful trainee act. MCL 762.13(1)(b).

3.38 Withdrawing or Challenging a Plea

Insert the following language near the top of page 67 immediately before Section 3.39:

Plea pursuant to drug treatment court admission. Effective January 1, 2005, 2004 PA 224 authorizes circuit and district courts to institute or adopt a drug treatment court. MCL 600.1062(1). Family divisions are also authorized to institute or adopt a drug treatment court for juveniles. MCL 600.1062(2). Criteria for admission, operating requirements, and procedural information about drug treatment courts appear in a new chapter of the revised judiciary act created by 2004 PA 224. See MCL 600.1060 *et seq.*

An individual who pleads guilty to a charged offense in order to apply for admission to a drug treatment court must be permitted to withdraw his or her plea if the individual is not admitted to the program. MCL 600.1068(5).

3.40 **Appealing a Plea-Based Conviction**

Insert the following text after the quoted paragraph near the top of page 68:

The United States Supreme Court reversed the Sixth Circuit’s decision in *Tesmer v Granholm* but did not address the constitutionality of MCL 770.3a because the Court concluded that the plaintiffs lacked standing to challenge Michigan’s procedure on behalf of “hypothetical indigents.” *Kowalski v Tesmer*, 543 US ____ (2004). Consequently, the controlling rule in Michigan is that set forth in *People v Bulger*, 462 Mich 495 (2000)—Michigan’s Constitution does not require that indigent defendants be appointed counsel to pursue discretionary appeals.

Update: Criminal Procedure Monograph 4—Felony Arraignments in District Court (Revised Edition)

Part A—Commentary on Felony Arraignments

4.20 A Crime Victim's Rights Following Arraignment

Insert the following text at the bottom of page 29:

Effective January 1, 2005, 2004 PA 224 authorizes circuit and district courts to institute or adopt a drug treatment court. MCL 600.1062(1). Family divisions are also authorized to institute or adopt a drug treatment court for juveniles. MCL 600.1062(2). If an offender is admitted to a drug treatment court, adjudication of his or her crime may be deferred. MCL 600.1070(1)(a)–(c). A crime victim and others must be permitted to submit a written statement to the court prior to an offender's admission to drug treatment court. MCL 600.1068(4) provides:

“In addition to rights accorded a victim under the crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, the drug treatment court must permit any victim of the offense or offenses of which the individual is charged, any victim of a prior offense of which that individual was convicted, and members of the community in which either the offenses were committed or in which the defendant resides to submit a written statement to the court regarding the advisability of admitting the individual into the drug treatment court.”

January 2005

Update: Domestic Violence Benchbook (3rd ed)

CHAPTER 3

Common “Domestic Violence Crimes”

3.6 Deferred Sentencing for Domestic Assault and Parental Kidnapping

A. Deferred Proceedings Under the Domestic Assault Statutes

On page 76 at the end of the paragraph beginning “Orders of probation . . . ,” insert the following text:

Effective January 1, 2005, 2004 PA 220 amended MCL 769.4a(3). The order of probation under MCL 769.4a may require the defendant to participate in a drug treatment court.

CHAPTER 3

Common “Domestic Violence Crimes”

3.6 Deferred Sentencing for Domestic Assault and Parental Kidnapping

B. Deferred Sentencing in Parental Kidnapping Cases

On page 79, insert the following text after the first sentence of the second paragraph:

The “terms and conditions” of the probation order may include participation in a drug treatment court. MCL 750.350a(4).*

*Effective
January 1,
2005. 2004 PA
223.

CHAPTER 4

Promoting Safety in Criminal Proceedings

4.14 Sentencing Domestic Violence Offenders

B. Choosing a Sentencing Option — Conditions of Probation

On page 151, after the second paragraph, insert the following text:

Effective January 1, 2005, the court may also require a probationer to participate in a drug treatment court. MCL 771.3(2)(g).*

*2004 PA 219.

January 2005

Update: Friend of the Court Domestic Violence Resource Book (Revised Edition)

CHAPTER 8

Criminal Court Proceedings Involving Domestic Violence

Part II — Criminal Procedures That May Affect Domestic Relations Proceedings

8.8 Probation Orders

B. Contents of Probation Orders and Their Significance in Domestic Relations Actions

Effective January 1, 2005, 2004 PA 219 amended MCL 771.3(2). Near the top of page 238, after the fifth bullet, add the following bulleted text:

- ♦ Participate in a drug treatment court.

CHAPTER 8

Criminal Court Proceedings Involving Domestic Violence

Part II — Criminal Procedures That May Affect Domestic Relations Proceedings

8.9 Deferred Proceedings

B. Deferred Proceedings Under the Domestic Assault Statutes

On page 242 at the end of the paragraph beginning “Orders of probation . . .,” insert the following text:

Effective January 1, 2005, 2004 PA 220 amended MCL 769.4a(3). The order of probation under MCL 769.4a may require the defendant to participate in a drug treatment court.

CHAPTER 8

Criminal Court Proceedings Involving Domestic Violence

Part II — Criminal Procedures That May Affect Domestic Relations Proceedings

8.9 Deferred Proceedings

C. Deferred Sentencing in Parental Kidnapping Cases

On page 245, insert the following text after the first sentence of the second paragraph:

The “terms and conditions” of the probation order may include participation in a drug treatment court. MCL 750.350a(4).*

*Effective
January 1,
2005. 2004 PA
223.

Update: Juvenile Justice Benchbook (Revised Edition)

CHAPTER 2

Jurisdiction, Transfer, and Venue

2.13 Jurisdiction and Authority Over Adults

Replace the quotation of MCL 712A.6 at the top of page 34 with the following quotation:

“The court has jurisdiction over adults as provided in this chapter and as provided in chapter 10A of the revised judiciary act of 1961, 1961 PA 236, MCL 600.1060 to 600.1082,* and may make orders affecting adults as in the opinion of the court are necessary for the physical, mental, or moral well-being of a particular juvenile or juveniles under its jurisdiction. However, those orders shall be incidental to the jurisdiction of the court over the juvenile or juveniles.”

*MCL 600.1060 to 600.1082 govern drug treatment courts. See the new Section 10.10, below, for information on drug treatment courts.

CHAPTER 4

Diversion and Consent Calendar Procedures

4.3 Requirements of the Crime Victim's Rights Act

D. Required Procedures Before Removing a Case From the Adjudicative Process

On page 77, insert the following text immediately before subsection (E):

Effective January 1, 2005, 2004 PA 224 authorizes circuit and district courts to institute or adopt a drug treatment court. MCL 600.1062(1). Family divisions are also authorized to institute or adopt a drug treatment court for juveniles. MCL 600.1062(2). If an offender is admitted to a drug treatment court, adjudication of his or her offense may be deferred. MCL 600.1070(1)(a)–(c).

In addition to the rights conferred upon a victim by the Crime Victim's Rights Act, a drug treatment court must permit a victim and others to submit a written statement to the court regarding whether a juvenile should be admitted into a drug treatment court. MCL 600.1068(4)* states:

“In addition to rights accorded a victim under the crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, the drug treatment court must permit any victim of the offense or offenses of which the individual is charged, any victim of a prior offense of which that individual was convicted, and members of the community in which either the offenses were committed or in which the defendant resides to submit a written statement to the court regarding the advisability of admitting the individual into the drug treatment court.”

See the January 2005 update that added Section 10.10, Juvenile Drug Treatment Court, for more information on drug treatment courts.

*Effective
January 1,
2005. 2004 PA
224.

CHAPTER 8

Pleas of Admission or No Contest in Delinquency Proceedings

8.7 Taking Pleas Under Advisement and Plea Withdrawal

On page 191, insert the following text after the quote of MCR 3.941(D):

Withdrawal of plea after denial of admittance into drug treatment court.

Effective January 1, 2005, 2004 PA 224 created drug treatment courts.* If a juvenile is denied admission to a drug treatment court after he or she has admitted responsibility and taken the other necessary steps for admission, the juvenile is entitled to withdraw his or her admission of responsibility. MCL 600.1068(5) states:

“An individual who has waived his or her right to a preliminary examination and has pled guilty or, in the case of a juvenile, has admitted responsibility, as part of his or her application to a drug treatment court and who is not admitted to a drug treatment court, shall be permitted to withdraw his or her plea and is entitled to a preliminary examination or, in the case of a juvenile, shall be permitted to withdraw his or her admission of responsibility.”

*See the January 2005 update that added Section 10.10 for more information on drug treatment courts.

CHAPTER 10

Juvenile Dispositions

10.7 Victim Impact Statements

Insert the following text on page 219 immediately before Section 10.8:

*Effective
January 1,
2005. 2004 PA
224.

Written statements regarding admission of juvenile to drug treatment court. In addition to the rights conferred upon a victim by the Crime Victim's Rights Act, a drug treatment court must permit a victim and others to submit a written statement to the court regarding whether a juvenile should be admitted into a drug treatment court. MCL 600.1068(4)* states:

“In addition to rights accorded a victim under the crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, the drug treatment court must permit any victim of the offense or offenses of which the individual is charged, any victim of a prior offense of which that individual was convicted, and members of the community in which either the offenses were committed or in which the defendant resides to submit a written statement to the court regarding the advisability of admitting the individual into the drug treatment court.”

See the January 2005 update that added Section 10.10, Juvenile Drug Treatment Court, for more information on drug treatment courts.

CHAPTER 10

Juvenile Dispositions

10.9 Dispositional Options Available to Court

C. In-Home Probation

Replace the second sentence of the first paragraph on page 221 with the following text:

As used in MCL 712A.18(1)(b),* “related” means:

“an individual who is at least 18 years of age and related to the child by blood, marriage, or adoption, as grandparent, great-grandparent, great-great-grandparent, aunt or uncle, great-aunt or great-uncle, great-great-aunt or great-great-uncle, sibling, stepsibling, nephew or niece, first cousin or first cousin once removed, and the spouse of any of the above, even after the marriage has ended by death or divorce. A child may be placed with the parent of a man whom the court has found probable cause to believe is the putative father if there is no man with legally established rights to the child. This placement of the child with the parent of a man whom the court has found probable cause to believe is the putative father is for the purposes of placement only and is not to be construed as a finding of paternity or to confer legal standing.”

Insert the following text on page 221 at the end of the second paragraph:

Effective January 1, 2005, MCL 712A.18(1)(b) was amended* to allow the court to order a juvenile to participate in a drug treatment court as a term of probation. Please see the January 2005 update that added Section 10.10, Juvenile Drug Treatment Court, for more information on drug treatment courts.

*Effective
December 28,
2004. 2004 PA
475.

*2004 PA 221.

CHAPTER 10

Juvenile Dispositions

10.9 Dispositional Options Available to Court

L. Orders Directed to Parents and Other Adults

On page 230, before the paragraph beginning “**Notice and hearing requirements**,” insert the following text:

Order to parent or guardian of a juvenile admitted to drug treatment court. Effective January 1, 2005, 2004 PA 224 created drug treatment courts. If a juvenile is admitted to a drug treatment court, the court also has jurisdiction over the parent or guardian of the juvenile. MCL 712A.6* states:

*Effective
January 1,
2005. 2004 PA
221.

*MCL
600.1060 to
600.1082
govern drug
treatment
courts.

“The court has jurisdiction over adults as provided in this chapter and as provided in . . . MCL 600.1060 to 600.1082,* and may make orders affecting adults as in the opinion of the court are necessary for the physical, mental, or moral well-being of a particular juvenile or juveniles under its jurisdiction. However, those orders shall be incidental to the jurisdiction of the court over the juvenile or juveniles.”

*Effective
January 1,
2005. 2004 PA
224.

MCL 600.1070(2)* states, in part:

“In the case of a juvenile participant, the court may obtain jurisdiction over any parents or guardians of the juvenile in order to assist in ensuring the juvenile’s continued participation and successful completion of the drug treatment court, and may issue and enforce any appropriate and necessary order regarding the parent or guardian of a juvenile participant.”

CHAPTER 10

Juvenile Dispositions

On page 231, insert the following new section and renumber the remaining sections accordingly:

10.10 Juvenile Drug Treatment Court

Effective January 1, 2005,* the Family Division may adopt a drug treatment court under MCL 600.1060 to MCL 600.1082 of the Revised Judicature Act. MCL 600.1062(2). This legislation also allows district and circuit courts to establish drug treatment courts. MCL 600.1062(1). Juvenile drug treatment courts are subject to the same requirements and procedures as adult drug treatment courts except as specifically provided in MCL 600.1060 to MCL 600.1082. A juvenile court may order, as a condition of probation, that a juvenile participate in a drug treatment court. MCL 712A.18(1)(b). If a juvenile is admitted into a drug treatment court, the juvenile's disposition may be deferred and, in some cases, dismissed upon successful completion of drug treatment court.

*2004 PA 224.

A. Admission to Drug Treatment Court

"Each drug treatment court shall determine whether an individual may be admitted to the drug treatment court." MCL 600.1064(1). However, a violent offender is not eligible for drug treatment court. *Id.* A "violent offender" is a person who meets either of the following criteria:

"(i) Is currently charged with or has pled guilty to, or, if a juvenile, is currently alleged to have committed or has admitted responsibility for, an offense involving the death of or a serious bodily injury to any individual, or the carrying, possessing, or use of a firearm or other dangerous weapon by that individual, whether or not any of these circumstances are an element of the offense, or is criminal sexual conduct of any degree.

"(ii) Has 1 or more prior convictions for, or, if a juvenile, has 1 or more prior findings of responsibility for, a felony involving the use or attempted use of force against another individual with the intent to cause death or serious bodily harm." MCL 600.1060(g)(i)–(ii).

No individual has a right to be admitted into a drug treatment court. MCL 600.1064(1).

In order to be admitted to drug treatment court, the juvenile must cooperate with and complete a preadmissions screening and evaluation assessment and must agree to cooperate with any future evaluation assessment as directed by the court. MCL 600.1064(3). MCL 600.1064(3) requires that all prescreening

assessments contain specific information. MCL 600.1064(3)(e) requires a juvenile offender's evaluation to contain "an assessment of the family situation including, as much as practicable, a comparable review of any guardians or parents."

If a juvenile who seeks admission to drug treatment court is charged with a criminal offense, the juvenile's admission must also comply with the conditions in MCL 600.1068, which states, in part:

"(1) If the individual being considered for admission to a drug treatment court is charged in a criminal case or, in the case of a juvenile, is alleged to have engaged in activity that would constitute a criminal act if committed by an adult, his or her admission is subject to all of the following conditions:

"(a) The offense or offenses allegedly committed by the individual must be related to the abuse, illegal use, or possession of a controlled substance or alcohol.

"(b) The individual, if an adult, must plead guilty to the charge or charges on the record. The individual, if a juvenile, must admit responsibility for the violation or violations that he or she is accused of having committed.

"(c) The individual must waive, in writing, the right to a speedy trial, the right to representation at drug treatment court review hearings by an attorney, and, with the agreement of the prosecutor, the right to a preliminary examination.

"(d) The individual must sign a written agreement to participate in the drug treatment court."

The prosecutor must approve of the juvenile's admission into the drug treatment court in conformity with the memorandum of understanding establishing the drug treatment court under MCL 600.1062. MCL 600.1068(2).

Traffic offenses. "An individual shall not be admitted to, or remain in, a drug treatment court pursuant to an agreement that would permit a discharge or dismissal of a traffic offense upon successful completion of the drug treatment court program." MCL 600.1068(3).

Victim and community statements. "In addition to rights accorded a victim under the crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, the drug treatment court must permit any victim of the offense or offenses of which the individual is charged, any victim of a prior offense of which that individual was convicted, and members of the community in which either the offenses were committed or in which the defendant resides to submit a written

statement to the court regarding the advisability of admitting the individual into the drug treatment court.” MCL 600.1068(4).

B. Making a Record Prior to Admission to Drug Court

Before a juvenile is admitted into a drug treatment court, the court must make certain findings. MCL 600.1066. MCL 600.1066 states that “the court shall find on the record, or place a statement in the court file pertaining to, all of the following:

“(a) The individual is dependent upon or abusing drugs or alcohol and is an appropriate candidate for participation in the drug treatment court.

“(b) The individual understands the consequences of entering the drug treatment court and agrees to comply with all court orders and requirements of the court’s program and treatment providers.

“(c) The individual is not an unwarranted or substantial risk to the safety of the public or any individual, based upon the screening and assessment or other information presented to the court.

“(d) The individual is not a violent offender.

“(e) The individual has completed a preadmission screening and evaluation assessment under [MCL 600.1064(3)] and has agreed to cooperate with any future evaluation assessment as directed by the drug treatment court.

“(f) The individual meets the requirements, if applicable, under . . . MCL 333.7411, . . . MCL 762.11, . . . MCL 769.4a, . . . MCL 771.1, . . . MCL 750.350a, or . . . MCL 750.430.*

“(g) The terms, conditions, and the duration of the agreement between the parties, especially as to the outcome for the participant of the drug treatment court upon successful completion by the participant or termination of participation.”

*These statutes are deferral statutes for specific crimes.

C. Accepting Plea

Once the court admits the juvenile into the drug treatment court, the court shall accept the juvenile’s admission of responsibility. The court may then either proceed to sentencing and include drug treatment court as a part of probation, or the court may defer sentencing until successful completion of drug treatment court. MCL 600.1070 states, in part:

“(1) Upon admitting an individual into a drug treatment court, all of the following apply:

“(a) For an individual who is admitted to a drug treatment court based upon having criminal charges currently filed against him or her, the court shall accept the plea of guilty or, in the case of a juvenile, the admission of responsibility.

“(b) For an individual who pled guilty to, or admitted responsibility for, criminal charges for which he or she was admitted into the drug treatment court, the court shall do either of the following:

(i) In the case of an individual who pled guilty to an offense that is not a traffic offense and who may be eligible for discharge and dismissal pursuant to the agreement with the court and prosecutor upon successful completion of the drug treatment court program, the court shall not enter a judgment of guilt or, in the case of a juvenile, shall not enter an adjudication of responsibility.

(ii) In the case of an individual who pled guilty to a traffic offense or who pled guilty to an offense but may not be eligible for discharge and dismissal pursuant to the agreement with the court and prosecutor upon successful completion of the drug treatment court program, the court shall enter a judgment of guilt or, in the case of a juvenile, shall enter an adjudication of responsibility.

“(c) Pursuant to the agreement with the individual and the prosecutor, the court may either defer further proceedings as provided in section 1 of chapter XI of the code of criminal procedure, 1927 PA 175, MCL 771.1, or proceed to sentencing, as applicable in that case pursuant to that agreement, and place the individual on probation or other court supervision in the drug treatment court program with terms and conditions according to the agreement and as deemed necessary by the court.”

D. Admission to Drug Treatment Court Denied—Withdrawal of Plea

If a juvenile is denied admission to a drug treatment court after he or she has admitted responsibility and taken the other necessary steps for admission, the juvenile is entitled to withdraw his or her admission of responsibility. MCL 600.1068(5) states:

“An individual who has waived his or her right to a preliminary examination and has pled guilty or, in the case of a juvenile, has admitted responsibility, as part of his or her application to a drug treatment court and who is not admitted to a drug treatment court,

shall be permitted to withdraw his or her plea and is entitled to a preliminary examination or, in the case of a juvenile, shall be permitted to withdraw his or her admission of responsibility.”

E. Court’s Continuing Jurisdiction

MCL 600.1070(2) states:

“The court shall maintain jurisdiction over the drug treatment court participant as provided in this act until final disposition of the case, but not longer than the probation period fixed under section 2 of chapter XI of the code of criminal procedure, 1927 PA 175, MCL 771.2. In the case of a juvenile participant, the court may obtain jurisdiction over any parents or guardians of the juvenile in order to assist in ensuring the juvenile’s continued participation and successful completion of the drug treatment court, and may issue and enforce any appropriate and necessary order regarding the parent or guardian of a juvenile participant.”

MCL 771.2(1) fixes a maximum two-year probation period for misdemeanors and a five-year maximum probation period for felonies. For stalking, a court may place an offender on probation for not more than five years; for aggravated stalking, a court may order probation for any term of years but not less than five years. MCL 771.2a(1)–(2). MCL 712A.2a, discussed in Section 14.1, governs a court’s continuing jurisdiction in cases under the Juvenile Code.

F. Successful Completion of Drug Treatment Court

In order to continue participating in and successfully complete a drug treatment court program, the juvenile must comply with all of the following:

- ◆ Pay all court ordered fines and costs, including minimum state costs.
- ◆ Pay the drug treatment court fee allowed under MCL 600.1070(4).
- ◆ Pay all court ordered restitution.
- ◆ Pay all crime victims rights assessments under MCL 780.905.*
- ◆ Comply with all court orders.

MCL 600.1074(1)(a)–(e).

The court is required to order a participant to pay all fines, costs, the fee, restitution, and assessments described above, and to pay all or any part of the costs of the treatment and the drug treatment court program services. However, the court may waive all or part of those fines, the fee, or costs of treatment if the court determines the payment would be a “substantial hardship for the individual or would interfere with the individual’s substance

*See Section 10.13 (renumbered with this update as 10.14) for more information on assessments under MCL 780.905.

abuse treatment.” MCL 600.1074(3). There is no provision for waiving payment of restitution or the crime victims rights assessment.

The court shall find on the record or place a written statement in the court file when a juvenile completes the drug treatment court program. The statement must indicate whether the juvenile successfully completed the program, or whether he or she was terminated from the program along with the reason for termination. MCL 600.1076(1).

When a juvenile successfully completes drug treatment court, the court must comply with the agreement that was made with the participant upon entering drug treatment court. MCL 600.1076(2) states:

“For a participant who successfully completes probation or other court supervision and whose proceedings were deferred or who was sentenced pursuant to [MCL 600.1070], the court shall comply with the agreement made with the participant upon admission into the drug treatment court, or the agreement as it was altered after admission by the court with approval of the participant and the prosecutor for that jurisdiction as provided in subsections (3) to (8).”

The court, with agreement of the prosecutor, and in conformity with the terms and conditions of the memorandum of understanding under MCL 600.1062, may discharge and dismiss the proceedings against a juvenile who meets all of the following criteria:

“(a) The individual has participated in a drug treatment court for the first time.

“(b) The individual has successfully completed the terms and conditions of the drug treatment court program.

“(c) The individual is not required by law to be sentenced to a correctional facility for the crimes to which he or she has pled guilty.

“(d) The individual is not currently charged with and has not pled guilty to a traffic offense.

“(e) The individual has not previously been subject to more than 1 of any of the following:

“(i) Assignment to the status of youthful trainee under . . . MCL 762.11.

“(ii) The dismissal of criminal proceedings against him or her under . . . MCL 333.7411, . . . MCL 769.4a, . . . MCL 750.350a, . . . MCL 750.430.”* MCL 600.1076(4).

*These statutes govern deferred proceedings for specific crimes.

A discharge and dismissal under this subsection shall be without an adjudication of responsibility and are not a finding of responsibility for purposes of MCL 600.1076 or for purposes of disqualifications or disabilities imposed by law upon a finding of responsibility. MCL 600.1076(6).

The court may only enter one discharge and dismissal under MCL 600.1076(4) for an individual. MCL 600.1076(6).

The court shall send a record of the discharge and dismissal to the criminal justice information center of the state police. The state police shall enter that information into the law enforcement information network (LIEN) with an indication of participation by the individual in a drug treatment court. *Id.*

G. Adjudication and Disposition

Except as provided in subsection (F), above, if a juvenile successfully completed probation or other supervision, the court is required to comply with MCL 600.1076(7). MCL 600.1076(7) states:

“(7) Except as provided in subsection . . . (4), . . . if an individual has successfully completed probation or other court supervision, the court shall do the following:

“(a) If the court has not already entered an adjudication of guilt or responsibility, enter an adjudication of guilt or, in the case of a juvenile, enter a finding or adjudication of responsibility.

“(b) If the court has not already sentenced the individual, proceed to sentencing or, in the case of a juvenile, disposition pursuant to the agreement.

“(c) Send a record of the conviction and sentence or the finding or adjudication of responsibility and disposition to the criminal justice information center of the department of state police. The department of state police shall enter that information into the law enforcement information network with an indication of successful participation by the individual in a drug treatment court.”

H. Termination of Participation in Drug Treatment Court

If a drug treatment court participant is accused of a new crime, a judge must “consider whether to terminate the participant’s participation in the drug treatment program in conformity with the memorandum of understanding under [MCL 600.1062].” MCL 600.1074(2). If a drug treatment court participant is convicted of a felony offense that occurred after the participant’s admission into drug treatment court, the judge shall terminate the participant’s participation in the program. *Id.*

Upon a participant's termination from drug treatment court, the court shall find on the record or place a written statement in the court file indicating that the participant's participation was terminated and the reason for the termination. MCL 600.1076(1).

MCL 600.1076(8) states:

“(8) For a participant whose participation is terminated or who fails to successfully complete the drug treatment court program, the court shall enter an adjudication of guilt, or, in the case of a juvenile, a finding of responsibility, if the entering of guilt or adjudication of responsibility was deferred pursuant to [MCL 600.1070], and shall then proceed to sentencing or disposition of the individual for the original charges to which the individual pled guilty or, if a juvenile, to which the juvenile admitted responsibility prior to admission to the drug treatment court. Upon sentencing or disposition of the individual, the court shall send a record of that sentence or disposition and the individual's unsuccessful participation in the drug treatment court to the criminal justice information center of the department of state police, and the department of state police shall enter that information into the law enforcement information network, with an indication that the individual unsuccessfully participated in a drug treatment court.”

CHAPTER 10

Juvenile Dispositions

10.13 Crime Victim's Rights Fund Assessment

A. Assessments of Convicted and Adjudicated Offenders

Insert the following text on page 254 immediately before subsection (B):

“In order to continue to participate in and successfully complete a drug treatment court program,” an offender must pay all crime victims rights assessments. MCL 600.1074(1)(d).

CHAPTER 14

Review of Juvenile Dispositions

14.5 Dispositional Review Hearings for Juveniles Placed in Out-of-Home Care

Delete the first two paragraphs on page 305 and insert the following text:

*Effective
December 28,
2004.

MCR 3.945(A)(2)(a) states that “[i]f the juvenile is placed in out-of-home care, the court must hold dispositional review hearings no later than every 182 days after the initial disposition, as provided in MCL 712A.19(2).” 2004 PA 477* eliminated the current language in MCL 712A.19(2) governing dispositional review hearings for juveniles placed in foster care. MCL 712A.19(2) now governs children placed in their own homes. MCL 712A.19(2) states in relevant part:

“ . . . if a child subject to the jurisdiction of the court remains in his or her home, a review hearing shall be held not more than 182 days from the date a petition is filed to give the court jurisdiction over the child and no later than every 91 days after that for the first year that the child is subject to the jurisdiction of the court. After the first year that the child is subject to the jurisdiction of the court, a review hearing shall be held no later than 182 days from the immediately preceding review hearing before the end of that first year and no later than every 182 days from each preceding review hearing thereafter until the case is dismissed. . . . ”

CHAPTER 14

Review of Juvenile Dispositions

14.9 Recording Dispositional Review Hearings

Effective December 28, 2004, 2004 PA 477 amended MCL 712A.19. Delete the last sentence of this section. MCL 712A.19(2) no longer provides for a rehearing that must be recorded stenographically.

CHAPTER 23

Selected Issues Regarding Imposition of Adult Sentence

23.4 Alternative Sentences for Major Controlled Substance Offenses

On page 476, after the last sentence insert the following text:

* 2004 PA 219.

Effective January 1, 2005,* the court may also require a probationer to participate in a drug treatment court. MCL 771.3(2)(g).

CHAPTER 24

Appeals

24.10 Appointment of Appellate Counsel

Insert the following text after the last paragraph on page 486:

The United States Supreme Court reversed the Sixth Circuit's decision in *Tesmer v Granholm** but did not address the constitutionality of MCL 770.3a because the Court concluded that the plaintiffs lacked standing to challenge Michigan's procedure on behalf of "hypothetical indigents." *Kowalski v Tesmer*, 543 US ____ (2004). Consequently, the controlling rule in Michigan is that set forth in *People v Bulger*, 462 Mich 495 (2000)—Michigan's Constitution does not require that indigent defendants be appointed counsel to pursue discretionary appeals.

*See the August 2003 update to page 486 for a discussion of the Sixth Circuit's decision in *Tesmer v Granholm*.

CHAPTER 25

Recordkeeping & Reporting Requirements

25.2 Access to Family Division Records and Confidential Files

After the first paragraph on page 492, insert the following text:

If a juvenile successfully completes participation in drug treatment court and the proceedings are discharged and dismissed, all records regarding the juvenile's participation are closed to public inspection and are exempt from disclosure under the Freedom of Information Act. MCL 600.1076(6).

Update: Managing a Trial Under The Controlled Substances Act

CHAPTER 15

Sentencing

15.7 Conditional Sentences Under §7411

C. Procedural Requirements for §7411 Sentences

Insert the following bulleted text immediately before the last bulleted text on page 346:

- One of the conditions of probation may be that defendant participate in a drug treatment court pursuant to MCL 600.1060–600.1082. §7411(1).*

*Effective
January 1,
2005. 2004 PA
225.

On page 347, substitute the following bulleted text for the fourth bulleted text:

- The state police shall maintain a non-public record of all discharges and dismissals pursuant to §7411. These records shall be available to police, prosecuting attorneys, and courts for determining whether an individual has already once utilized §7411 or is eligible for discharge and dismissal of proceedings by a drug treatment court. §7411(2).

Update: Sexual Assault Benchbook

CHAPTER 3

Other Related Offenses

3.7 Child Sexually Abusive Activity

A. Statutory Authority

3. Possession of Child Sexually Abusive Material

Effective December 28, 2004, 2004 PA 478 amended MCL 750.145c. The amendments added computer technicians to the list of people that are exempt from MCL 750.145c(4). In the March 2003 update to page 132, replace the quoted paragraph (a) with the following quote:

“(a) A person described in [MCL 752.367 (governing exemptions from first- and second-degree obscenity)], a commercial film or photographic print processor acting pursuant to subsection (8), or a computer technician acting pursuant to subsection (9).*” MCL 750.145c(4)(a).

*(MCL 750.145c(8) and MCL 750.145c(9) create immunity from civil liability and protect as confidential the identity of a commercial film or photographic print processor or a computer technician who reports a depiction of a child engaged in a listed sexual act to a law enforcement agency.

CHAPTER 9

Post-Conviction and Sentencing Matters

9.5 Imposition of Sentence

E. Probation

5. Contents of Probation Orders

Effective January 1, 2005, 2004 PA 219 amended MCL 771.3 to allow the court to impose an additional condition on probationers. After the fourth bullet on page 461, insert the following bullet:

- ♦ Participate in a drug treatment court. Note, however, that persons charged with or who have pled guilty to “criminal sexual conduct of any degree” are ineligible for drug treatment court. MCL 600.1060(g)(i) and MCL 600.1064(1).

6. Delayed Sentencing

Effective January 1, 2005, 2004 PA 219 amended MCL 771.1(2) to allow for an offender’s participation in drug treatment court. In the paragraph beginning at the bottom of page 461, change the quotation of MCL 771.1(2) to read “eligibility for probation or other leniency compatible with the ends of justice and the defendant’s rehabilitation, such as participation in a drug treatment court under . . . MCL 600.1060 to 600.1082.” Note, however, that persons charged with or who have pled guilty to “criminal sexual conduct of any degree” are ineligible for drug treatment court. MCL 600.1060(g)(i) and MCL 600.1064(1).

CHAPTER 10

Other Remedies for Victims of Sexual Assault

10.3 Defenses to Civil Actions

A. Statutes of Limitations for Civil Actions

2. Commencement of Limitations Period and the “Discovery Rule”

Insert the following text before the November 2002 update to page 486:

A plaintiff’s claim of fraudulent concealment under MCL 600.5855 requires the plaintiff to establish that the conduct on which the fraudulent concealment claim is based prevented the plaintiff from knowledge of his or her claim against the defendant. *Doe v Roman Catholic Archbishop of the Archdiocese of Detroit*, ___ Mich App ___, ___ (2004). In *Doe*, the plaintiff claimed that the statute of limitations on his tort action should be tolled by the defendant’s concealment of plaintiff’s claims against the defendant.

The plaintiff claimed that the defendant knew about and purposely concealed Burkholder’s (a priest’s) history of sexual abuse by moving the priest from diocese to diocese and that this conduct prevented the plaintiff from knowing that other complaints had been lodged against Burkholder and that the plaintiff himself had legal recourse against the defendant. *Doe, supra* at _____. The Court of Appeals disagreed:

“[E]ven if plaintiff did not know for certain that defendant knew of Burkholder’s abuse of other children, defendant’s knowledge of Burkholder’s abuse of other children was not required for plaintiff to be aware of his causes of action against defendant.

* * *

“It was not necessary for plaintiff to know of widespread abuse in the church for him to have had knowledge of his causes of action against defendant. Thus, even if defendant attempted to conceal the “widespread sexual abuse” problem from the public at large, this attempt could not have concealed from plaintiff his causes of action against defendant.” *Doe, supra* at _____.

The Court explained that the actions on which the plaintiff based his fraudulent concealment claim “amount[ed] to mere silence,” conduct that is insufficient to support an exception to the applicable statute of limitations on tort claims. Accordingly, the Court ruled that the plaintiff’s claims were time-barred because the fraudulent concealment exception under MCL 600.5855 did not apply.

CHAPTER 11

Sex Offender Identification and Profiling Systems

11.6 Law Enforcement's Retention of Fingerprints, Arrest Card, and Description

B. Mandatory Reporting By Clerk of Court on Final Dispositions

Effective January 1, 2005, 2004 PA 220 amended MCL 769.16a to expand the list of dispositions that the clerk must report to the State Police. On page 547 at the end of the first full paragraph add the following text:

The report must also include the sentence if imposed under MCL 750.350a (parental kidnapping) and MCL 600.1076(4) (discharge and dismissal of drug treatment court proceedings). MCL 769.16a(1)(b)–(c).